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May 11, 1983

Ms. Edna May Cate, Executive Secretary  
Board of Barbering and Cosmetology  
Hazen Drive  
Concord, New Hampshire 03301

Dear Ms. Cate:

By memo dated April 29, 1983, you requested an opinion on whether the board of barbering and cosmetology has the authority or responsibility for licensing and regulating estheticians.

It is our informal opinion that you do not have the authority or responsibility for licensing or regulating estheticians.

An esthetician (or aesthetician, as used in the Mass.Gen. Laws Ann. Ch. 112, §87T, et seq.) generally practices the cleaning, stimulating, manipulating and beautifying of skin and the giving of treatments to keep skin healthy and attractive. Specializing in skin care, an esthetician treats such problems as dehydration, temporary capillary dilation, excessive oiliness, clogged pores and acne. An esthetician is not authorized, however, to prescribe medication or provide medical treatments in the same manner as a dermatologist. He may use his hands, or mechanical or electrical apparatus or appliances. See Mass.Gen. Laws Ann. Ch. 112, §87T and Gerson, Standard Textbook for Professional Estheticians (1980) at p. 14. See also HB 788 from the 1983 session of the New Hampshire Legislature, and the definition of aesthetician contained therein.

In RSA 313-A:1, II, the definition of "barbering" includes the following language:



"(b) Giving facial or scalp massages or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances. ...

(d) Applying cosmetic preparations, anti-septics, powders, oils, clays, or lotions to scalp, face, or neck, or removing superfluous hair from the face or neck of any person;"

The definition of "cosmetologist" in RSA 313-A:1, VI includes "performing work as a cosmetologist." Although this definition of cosmetologist is quite vague, it is our understanding that a cosmetologist often performs some of the skin care services which we described earlier as the functions of an esthetician. There is thus apparently an overlap in the duties performed by an esthetician and those which a licensed barber or cosmetologist in New Hampshire may perform.

Under the New Hampshire statutes, any person who wishes to be a licensed barber or cosmetologist must satisfy the requirements of RSA 313-A:9 and 10 respectively. These requirements include training in a barbering or cosmetology school and an apprenticeship in the respective profession. RSA 313-A:8 makes it a misdemeanor for any person to engage in the practice of barbering or cosmetology without a license.

Although some of the duties performed by an esthetician fall within the definition of barbering, and possibly cosmetology, it would be difficult to read RSA 313-A as a whole as requiring the licensing of estheticians. An esthetician specializes in skin care and thus requires much more extensive training in that specialty than either a barber or a cosmetologist would receive under the present New Hampshire requirements. Moreover, an esthetician would be called upon to treat many symptoms which a barber or cosmetologist would be unqualified to treat.

The definition of "barbering" cited above is virtually the same as the definition originally included in the statute enacted in 1937. See the former RSA 313:1. At the time this language was enacted, the field of esthetics was not recognized as a separate and distinct occupation. It is only fairly recently that esthetics has come to be recognized as such in this country.

Since statutes are enacted to deal with conditions in existence at the time of their enactment, it is not improper when interpreting them to give attention to changes that have

occurred during the intervening years. State v. Millette, 299 A.2d 150, 112 N.H. 458 (1972). It is our opinion that the development of esthetics as a separate occupation is a significant change which warrants a different interpretation of the statute. Statutory language is not always to be given its broadest meaning or one which the context and subject matter show was probably not intended. North Hampton Racing and Breeding Association v. Conway, 48 A.2d 472, 94 N.H. 156 (1946).

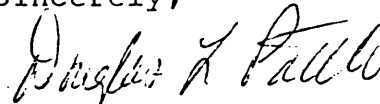
It should also be pointed out that the definition of barbering was re-enacted in 1981 with only minor changes. Since it had never to the best of our knowledge been interpreted to authorize the licensing of estheticians, this re-enactment is evidence of legislative intent to continue the existing interpretation of the statute. See State v. Deane, 135 A.2d 897, 101 N.H. 127 (1957).

If RSA 313-A were to be interpreted to authorize the board to license and regulate estheticians, there would be many illogical and absurd consequences. An esthetician would have to meet the qualifications of a barber or cosmetologist and thus would have to attend a school and perform an apprenticeship in either of those areas. Since neither barbers nor cosmetologists are required to concentrate on skin care in either their instructional courses or their apprenticeships, much of the training and practice would be irrelevant to the practice of esthetics. Neither the licensee who went on to practice esthetics, nor the members of the general public on whom he performed his services, would be served by the requirement that an esthetician meet the qualifications of a barber or cosmetologist. Thus, since the courts should not ascribe to the legislature an intent which would lead to unfortunate consequences, Bolduc v. Richards, 142 A.2d 156, 101 N.H. 303 (1958), and since statutes should not be interpreted to produce unjust and seemingly illogical results, General Electric Co. v. Dole Co., 202 A.2d 486, 105 N.H. 477 (1964); Doe v. State, 328 A.2d 784, 114 N.H. 714 (1974), RSA 313-A should not be read to require the licensing of estheticians. Moreover, since there is a criminal penalty for a person who practices barbering or cosmetology without a license, this is a licensing statute with a penal provision and as such it should be strictly construed. See Maxfield v. Bressler, 55 N.E.2d 424, 425, 38 Ohio Law Abs. 449 (1942); Commonwealth v. Loyal Order of Moose Lodge No. 148, 149 A.2d 565, 568, 188 Pa.S. 531 (1959).

A statute must be read as a whole and all of its sections must be construed together. Blue Mountain Forest Association v. Town of Croydon, 400 A.2d 55, 119 N.H. 202 (1979). When RSA 313-A in its current form is read as a whole, it is our opinion that it cannot reasonably be interpreted to authorize the licensing or regulation of estheticians.

I trust this has been responsive to your question. Please let me know if you have any further questions.

Sincerely,



Douglas L. Patch  
Assistant Attorney General  
Division of Legal Counsel

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